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In the Court of Common Pleas of Philadelphia
County.

IN EQUITY.

Between

*John Sellers, Junior, Henry Pratt
McKean, Evan Randolph, Henry
Baldwin, Henry C. Lea, Cole-
man Sellers, Henry Lewis, N. B.
Browne, Lemuel Coffin, John
S. Newbold, William P. Jenks,
Charles T. Parry, John Mc-
Laughlin, Clarence H. Clark,
Edward Sims, William B. Be-
ment, Alexander Fergusson, Wil-
liam Trumble, Paul Graff, George
Whitney, Edward Lewis, James
S. Whitney, John Shedwick,
Clayton Macmichael, Complain-
ants,*

and

*The Pennsylvania Railroad Com-
pany and Joseph J. Martin,
Alfred M. Fuller, Samuel W.
Allerton, John R. McPherson,
William M. Fuller, Thomas B.
Schraver and James McFillin,
Junior, Defendants.*

Of December Term, 1874.

No.

The complainants allege as follows:—

I. The defendant, The Pennsylvania Railroad Company, a corporation of this Commonwealth, is seized of a tract of land situate on the west bank of the river Schuylkill, in the Twenty-fourth Ward of this city, extending along the river northward from near the Market street bridge and westward to Thirtieth street, containing about twenty-four acres of ground.

On the first day of August, 1874, by articles of agreement of that date, (of which, as part of this bill, a copy is hereto annexed marked A,) the said defendants covenanted and agreed with the defendants, Joseph J. Martin, Alfred M. Fuller, Samuel W. Allerton, John R. McPherson, William M. Fuller, Thomas B. Schriver and James McFillin, Junior, to set apart and appropriate the said premises described therein as follows:—

“All that certain tract of land situate north of Market street, in the Twenty-fourth Ward of the city of Philadelphia, beginning on the west side of the Schuylkill river, at the east end of the pier or bulk-head on the north side of the slip north of the grain warehouse belonging to the said corporation; thence extending westward along the line between said pier and slip continued westward to the east side of Thirtieth street; thence northward along the east side of said Thirtieth street, as the same is now laid out, or as the same may hereafter be laid out, to the northern boundary of the property of the said corporation; thence eastward along the said northern boundary to the east line of the bulk-head on the west side of the Schuylkill river; and thence southward along the said east line of said bulk-head to the place of beginning,” for the uses and purposes of a stock-yard; and did agree to grade and drain the same and to construct thereon all the necessary sheds, fences, platforms and other improvements required for and incidental to a stock-yard or place for the reception, loading, unloading, delivery, distribution, transfer, shipment, feeding, watering and taking care of and dealing in live stock of every kind, the said improvements to be commenced forthwith, and to be diligently and continuously prosecuted to completion, at a cost not exceeding \$250,000; and to lay down and construct such railroad tracks as might be necessary for the delivery and handling of all the live stock that might be delivered at or removed therefrom, and to connect such tracks with the main line of The Pennsylvania Railroad.

As soon as the said premises should be graded and improved, the tracks laid down and the buildings and improvements completed, which was to be done on the 1st of January, 1875, or as soon thereafter as practicable, the said corporation agreed to execute a lease of the premises and improvements to the other

defendants for a term of twenty years thereafter, at a yearly rent of (1) ten per cent. on the cost of all such buildings and improvements (except railroad tracks), besides six per cent. interest on current payments, till completion; (2) six per cent. on the cost of grading, sewage, paving, &c.; (3) \$21,000 a year as a rent for the ground; and (4) all taxes, insurance, repairs, renewals, &c.

As part of the said articles of agreement, a form of indenture of lease was annexed thereto, (being part of Exhibit A,) whereby the said tract of land, structures and improvements were leased for the purpose of being maintained and used as a stock-yard, "for the reception, loading, unloading, delivery, distribution, transfer, shipment, feeding, watering and dealing in live stock of every kind," for the term of twenty years, and it was thereby agreed that the lessees should keep and maintain the premises as a stock-yard, for the reception of and dealing in live stock of every kind, and should not use or occupy the same for any other use or purpose; and it was also agreed, that the lessees should have the right to erect upon the premises a building, with the necessary fixtures and apparatus, for killing and dressing cattle, sheep and hogs. It was provided in the said lease, that if at any time during the said term the slaughtering, killing and dressing of cattle, sheep or hogs, or the carrying on of a stock business, should be prohibited by law, the buildings should be paid for as therein provided.

II. In pursuance of said articles of agreement, the corporation defendant, the lessor, is now actively engaged in preparing the said tract, and threatens and intends forthwith to construct thereon sheds, fences, platforms, railway tracks and other improvements necessary to the reception, feeding, watering, killing and dressing of cattle, sheep and hogs; and the other defendants, the lessees, threaten and intend, as soon as the premises are ready for occupancy, to execute the said lease, and commence forthwith the said business of keeping, killing and dressing cattle, sheep and hogs thereon. The complainants are informed and believe that the said stock-yard is to have a capacity for stabling seven thousand five hundred cattle, eight thousand hogs and twelve thousand sheep, and that the annual number slaughtered will not be less than two hundred thousand cattle, four hundred

thousand hogs and eight hundred thousand sheep, with a progressive increase from year to year.

III. The complainants are, respectively, owners and occupiers of real estate in the immediate vicinity of the said tract of land so proposed to be used as a stock-yard, pig-sty and slaughter-house. They aver that such use of this land will greatly depreciate the value of their property ; will destroy their comfort and endanger their health, and will be a public and a common nuisance, and they here show to the Court some of the reasons for this averment:—

1. The stench arising by day and night from the bodies, alive and dead, of the many thousands of cattle, sheep and hogs, which it is proposed to keep, to kill and to dress on the premises, will be carried by the wind into the dwellings of the complainants, and render them intolerable and unhealthy, and especially will this be so during the warmer months, when their windows are necessarily kept open.

2. The drainage from the premises will be carried into the river Schuylkill, which at this point is narrow, shallow and comparatively stagnant. Its width is but about four hundred feet. Its depth at low tide does not exceed an average of about ten feet. The ebb and flow of the tide is checked by the dam erected across the river at a short distance to the north, and the flow of water over the dam, never very great unless during freshets, often ceases altogether,—especially is this so during hot weather. In spite of every conceivable care and precaution in collecting the manure and urine of the live stock, and the offal, blood and filth coming from those slaughtered, some considerable portion must necessarily escape, and the very attempts to keep the pens and slaughter-houses sweet by constant washing must result in the river being tainted by the water thus used and draining into it. And this water will either lie, more or less stagnant, in front of the premises, or will be carried backwards and forwards with the tide, and convert the stream, from Fairmount dam to Gray's Ferry, into a source of dangerous infection. Especially will this be the case with the mud flats below the

wharfing, which are left bare at low tide, as the mud, becoming impregnated with putrescent animal matter, will, when exposed to the sun during summer, prove exceedingly injurious to the health and well being of the complainants, as well as the public at large, and to the crowded inmates of the Almshouse and University hospital, and other public institutions.

3. The complainants are informed that the defendants propose to collect, so far as they can, the offal, blood and filth which will result from this business, and to carry off the same during the winter, when the navigation is obstructed by ice, in closed or covered cars, and at other times in closed or covered boats; but the complainants aver that no system of closing either cars or boats can effectually keep in the effluvia arising from their contents, apart from the fact that in a very short time such cars and boats will themselves become so saturated with the offensive matter which they carry as to be, of themselves, nuisances. And the moving to and fro of such nuisances, full or empty, will, they aver, destroy the comfort and imperil the health of those in the neighborhood which they traverse.

4. Notwithstanding every care, the wharves, piles and all wooden structures, as well those connected with the business as those lining the river on either side, both above and below the said premises, must, in a short time, become saturated with offensive matter, giving off, when exposed to the sun, exhalations dangerous to health.

5. The property on the east side of the river is, as to a great part of it, covered with some of the finest improvements and most highly-taxed dwellings in the city, and the pressure from want of space is producing a corresponding improvement on the west side of the river; and the complainants aver that long before the expiration of the twenty years during which it is proposed to carry on this business on these premises they will be almost in the heart of the city.

IV. And the complainants show that there is no absolute necessity for the location which the defendants have chosen for this business; that if further accommodations for the cattle traffic of the said railroad are required, ample facilities are to be found on the Delaware river, on either side of which the Pennsylvania Railroad Company has tracks for carrying live stock and bringing dressed meats to market, and that on the said Delaware river situations may be found which, while sufficiently accessible, will yet be remote enough to preserve from disease the crowded districts of the city, and where, moreover, the surrounding property would rather be benefited than injured. Indeed, the complainants aver that the location chosen by the defendants is one of very doubtful commercial expediency to themselves, as the river Schuylkill is subject to sudden and violent freshets, and within a comparatively short time the water has risen to a height of eleven feet above the wharf-logs on this very ground.

And they further show that the corporation defendant is now seeking to do the very thing which heretofore it has prohibited others from doing—that is to say, the said tract of land is part of a larger tract which the defendants purchased many years ago; from time to time it has sold off portions of this tract in building-lots, and the conveyances made to purchasers were so made “under and subject to the restriction and express agreement that no slaughter-house, skin-dressing establishment, * * or other building for offensive occupation, shall at any time hereafter be erected or used upon any part of the premises.”

And the complainants show that at once, on learning of the proposed use to which these premises were to be put, they remonstrated with the corporation defendant, and then, after careful examination of the manner in which the latter, or their lessees, carried on a similar business elsewhere, under circumstances much more favorable to health, protested against such proposed use of the premises; but in reply to such protest, they were informed that the location was selected long before any question was raised in regard to the matter, and that the defendants believed and still believe it to be the best location now known in any city in the world for the construction of such a work.

Hence the complainants need equitable relief, as follows:—

I. That an injunction issue, preliminary until hearing and perpetual thereafter, to restrain the defendants, The Pennsylvania Railroad Company, from further proceeding in the establishment and erection, upon the premises hereinbefore mentioned, of the improvements required for or incidental to a stock-yard or place for the reception and care of cattle, sheep, hogs and other live stock, and for the slaughtering and dressing thereof, and from using for such purposes such buildings or improvements as have already been erected thereon, and also from executing the lease of the premises hereinbefore set forth, or any other such lease, to the defendants, Joseph J. Martin, Alfred M. Fuller, Samuel W. Allerton, John R. McPherson, William M. Fuller, Thomas B. Schriver and James McFillin, Junior, or any of them, or to any other person or persons.

II. That an injunction do also issue, to restrain the defendants, Joseph J. Martin, Alfred M. Fuller, Samuel W. Allerton, John R. McPherson, William M. Fuller, Thomas B. Schriver and James McFillin, Junior, from using the said premises for the purposes of a stock-yard or place for the reception, taking care of and dealing in cattle, sheep, hogs and other live stock, and for slaughtering and dressing the same, and from executing the lease of the said premises hereinbefore set forth, or any other such lease, from the defendants, The Pennsylvania Railroad Company, or from any other person or persons.

III. General relief.

CHAS. B. McMICHAEL,
WM. HENRY RAWLE,
E. SPENCER MILLER,
For Complainants.

EXHIBIT A.

AGREEMENT.

THIS AGREEMENT, Made the first day of August, one thousand eight hundred and seventy-four (1874), between The Pennsylvania Railroad Company, party of the first part, and Joseph J. Martin, Alfred M. Fuller, Samuel W. Allerton, John R. McPherson, William M. Fuller, Thomas B. Schriver and James McFillin, Jr., parties of the second part, witnesseth, that the said parties hereto, as well for and in consideration of the sum of one dollar lawful money by each of them unto the others paid at the time of the execution hereof, the receipt whereof is hereby acknowledged, as of the covenants and agreements to be performed by the said parties respectively as hereinafter mentioned, have covenanted, promised and agreed, and by these presents do covenant, promise and agree, to and with each other, as follows, to wit:—

First.—The party of the first part do hereby agree to set apart and appropriate, for the uses and purposes of a stock-yard, the following-described premises, to wit:—All that certain tract of land situate north of Market street, in the Twenty-fourth Ward of the city of Philadelphia, beginning on the west side of the Schuylkill river, at the east end of the pier or bulk-head on the north side of the slip north of the grain warehouse belonging to the Pennsylvania Railroad Company; thence extending westward along the line between said pier and slip continued westward to the east side of Thirtieth street; thence northward along the east side of said Thirtieth street, as the same is now laid out, or as the same may hereafter be laid out, to the northern boundary of the property of the Pennsylvania Railroad Company; thence eastward along the said northern boundary to the east line of the bulk-head on the west side of the Schuylkill river, and thence southward along the said east line of said bulk-head to the place of beginning; containing _____ acres of land, more or less,—a plan of which said tract of land is

hereunto annexed and made part of this agreement. (Reserving thereout the ground occupied by the party of the first part for an oil-house and pumping-engine.)

And the said party of the first part do further agree to grade and drain the said premises, and to construct thereon all the necessary and convenient sheds, fences, platforms and other improvements that may be required for, or incidental to, a first-class stock-yard, or place for the reception, loading, unloading, delivery, distribution, transfer, shipment, feeding, watering and taking care of and dealing in live stock of every kind; the said buildings and improvements to be commenced forthwith, and to be diligently and continuously prosecuted to completion, and completed on or before the first day of January, one thousand eight hundred and seventy-five (1875), or as soon thereafter as practicable; to be constructed of such character and extent, and according to such plans, as may be mutually agreed upon between the general manager or other proper officer or agent of the said Pennsylvania Railroad Company and the said parties of the second part; but the cost or value of said buildings and improvements shall not exceed the sum of two hundred and fifty thousand dollars; and the said parties of the first part do hereby further agree to lay down, construct and maintain such railroad tracks, turnouts, sidings and switches to and from, upon and over, the said premises as may be necessary and proper for the safe, convenient and speedy delivery and handling of all the live stock that may be consigned to or intended for delivery upon the said premises, and for the transfer, shipment and removal of such live stock therefrom; and to connect the said railroad tracks with the main line of the Pennsylvania Railroad, at such points as may be fixed by the party of the first part.

Second.—And the said party of the first part do also hereby covenant and agree that when and as soon as the said premises are graded and improved, and the said railroad tracks, turnouts, sidings and switches are laid and constructed, and the said buildings and improvements are made, constructed and completed as aforesaid, and the said premises are ready to be opened and used as a stock-yard, to wit, on the first day of January, one thousand eight hundred and seventy-five (1875), or as soon

thereafter as practicable, then they, the said party of the first part, shall and will forthwith execute and deliver unto the said parties of the second part an indenture of lease of the said premises, with the buildings and improvements thereon erected, for the term of twenty years from the first day of January, one thousand eight hundred and seventy-five (1875), or from the date of the completion of said buildings and improvements, at a yearly rent to be computed and composed as follows:—

First.—Ten per centum on the cost of all the sheds, fences, platform, structures, grading, paving and improvements as aforesaid, made and constructed upon the said premises, (except railroad tracks, turnouts, sidings and switches,) to which cost shall be added interest at six per cent. on current payments and expenditures for said structures and improvements as aforesaid, up to the time of the completion thereof. *Second.*—Six per centum on the cost to be paid by the party of the first part of all such grading, sewage, paving and other expenditures incident to the opening of new streets over, through or abutting upon the premises herein demised, as may be required by ordinance or resolution of the municipal authorities of the city of Philadelphia. *Third.*—Twenty-one thousand dollars per annum as a rent for the ground included in the said lease. *Fourth.*—All taxes that may be laid or levied on the property leased; and, in addition to the said yearly rent and taxes, the parties of the second part are to pay for all fire insurance, repairs and renewals upon the said premises, and for keeping the same in good condition; and to give approved security for the payment of the said rent and for the faithful performance of all the conditions of the lease; the said rent to be paid quarterly, on the first days of January, April, July and October in each year, during the continuance of said lease.

Third.—And the said parties hereto do mutually covenant and agree to execute and deliver the said indenture of lease in the form hereunto annexed, which is hereby made a part of this agreement.

In Witness Whereof, The said party of the first part have caused their corporate seal to be hereunto affixed and have

caused these presents to be signed by their president and the execution hereof to be attested by their secretary; and the said parties of the second part have hereunto set their hands and seals the day and year first above written.

G. B. ROBERTS,
Vice-President.

[^{SEAL}
PENN. R. R. CO.]

Attest:

JOS. LESLEY,
Secretary.

JOS. J. MARTIN,	[SEAL]
ALFRED M. FULLER,	[SEAL]
SAMUEL W. ALLERTON,	[SEAL]
JNO. R. McPHERSON,	[SEAL]
WILLIAM M. FULLER,	[SEAL]
THOS. B. SCHRIVER,	[SEAL]
JAMES McFILLIN, JR.	[SEAL]

Sealed and delivered in the presence of

EXHIBIT B.

LEASE.

THIS INDENTURE, Made this day of one thousand eight hundred and seventy-four (1874), between the Pennsylvania Railroad Company, party of the first part, hereinafter called the lessors, and Joseph J. Martin, Alfred M. Fuller, Samuel W. Allerton, John R. McPherson, William M. Fuller, Thomas B. Schriver and James McFillin, Jr., parties of the second part, hereinafter called the lessees, witnesseth, that the said lessors, as well for and in consideration of the yearly rent or sum of money and taxes to be paid, and of the covenants and agreements to be kept and performed by the said lessees as

hereinafter mentioned, as of the sum of one dollar lawful money unto the said lessors paid by the said lessees at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have let and demised, and by these presents do let and demise, unto the said lessees, their executors, administrators and assigns, all that certain tract of land situate north of Market street, in the Twenty-fourth Ward of the city of Philadelphia, beginning on the west side of the Schuylkill river, at the east end of the pier or bulk-head on the north side of the slip north of the grain warehouse belonging to the Pennsylvania Railroad Company; thence extending westward along the line between said pier and slip continued westward to the east side of Thirtieth street; thence northward along the east side of said Thirtieth street, as the same is now laid out, or as the same may hereafter be laid out, to the northern boundary of the property of the Pennsylvania Railroad Company; thence eastward along the said northern boundary to the east line of the bulk-head on the west side of the Schuylkill river, and thence southward along the said east line of said bulk-head to the place of beginning; containing _____ acres of land,

more or less,—a plan of which said tract of land is hereunto annexed and made part of this agreement. (Reserving thereout the ground occupied by the party of the first part for an oil-house and pumping-engine.) Which said tract of land and structures and improvements are to be maintained and used as and for a first-class stock-yard, or place for the reception, loading, unloading, delivery, distribution, transfer, shipment, feeding, watering and taking care of and dealing in live stock of every kind. To have and to hold the premises hereby demised unto the said lessees, their executors, administrators and assigns, for and during the full end and term of twenty years from the

day of _____ one thousand eight hundred and seventy-five (1875), fully to be completed and ended, unless sooner terminated and ended as hereinafter provided. Yielding and paying therefor unto the said lessors, their successors and assigns, the yearly rent or sum of

_____ dollars lawful money, in equal quarterly payments, on the first days of April, July, October and January in each year during the said term; together with a further yearly

rent or sum which shall be equal to the amount of all charges for water-rents and taxes—United States, State, county or municipal—which may be yearly imposed by authority of law on the hereby demised premises, and on the buildings and improvements thereon, including six per cent. interest per annum on the cost of all grading, sewage, paving, or other expenditures incident to opening new streets over, through or abutting upon the premises hereby demised; and together, also, with a further yearly rent or sum which shall be equal to a premium of insurance against loss by fire of not less than fifty per cent. upon the cost of the structures and improvements erected on the hereby demised premises and liable to be destroyed by fire; the said sums for water-rent, taxes, interest and insurance to be paid on the first day of January, or such other dates as the same may be demanded by the party of the first part, in each year during said term; and together, also, with a further yearly rent or sum, payable quarterly as aforesaid, which shall be equal to ten per centum per annum upon the cost of such further buildings and improvements as may be erected, as hereinafter mentioned; but should the buildings and improvements upon the hereby demised premises, or any part thereof, be destroyed by fire resulting from the negligence or want of care of the lessors, and a claim be made and established by the lessees for loss and damage sustained thereby, it is agreed that the measure of such damage or loss shall be an abatement of the rent hereby reserved upon the portion of property destroyed proportionate to the whole amount of rent reserved.

And it is hereby mutually covenanted and agreed, by and between the lessors and lessees, for themselves, and for their respective successors, heirs, executors, administrators and assigns, in manner following,—it being understood that the premises are demised under and subject to these covenants and agreements, and that they are to inure and be regarded as strict legal conditions, viz. :—

First.—The lessees shall and will well and promptly pay, or cause to be paid, to the lessors the yearly rent and sums of money herein and hereby reserved and mentioned, on the days and

times hereinbefore mentioned for the payment thereof; and shall and will, at their own expense, keep the demised premises in the like good order and condition in which they now are, and repair and renew such portions as may be worn out by use or destroyed by accident, and maintain and keep the said premises in good, safe and efficient order and condition for the prosecution of the traffic and business to be transported and transacted over and upon the same; and shall not and will not knowingly or willingly do or commit, or suffer to be done or committed, any act or thing contrary to the conditions of the policy or policies of fire insurance on the said premises; and shall and will be responsible for and pay all loss and damage (not resulting from fire) that may be sustained by any person or persons by reason of the negligence or want of care of the lessees, their agents or servants, in and about the management of the said stock-yard and premises, and of the live stock delivered therein or thereon; and shall and will cause an insurance to be effected to the amount of not less than ten thousand dollars, "for account of whom it may concern," for the purpose of securing from loss by fire the owners of the live stock delivered and kept on said premises, and for the safe keeping and delivery of which either the lessors or lessees, or both, may be legally liable.

Second.—The lessees shall and will keep and maintain the premises hereby demised as a first-class stock-yard, or place for the reception, loading, unloading, delivery, distribution, transfer, shipment, feeding, watering and taking care of and dealing in live stock *of every kind*; and shall and will receive from the cars *all* live stock that may be delivered upon the said premises, and without delay cause the same, at their own expense, to be unloaded and properly fed, watered and taken care of while upon the said premises and in their custody; and when any of the said live stock shall be destined or consigned to any point or points east of the city of Philadelphia, or elsewhere, to cause the same properly and without delay to be reloaded in the cars provided to receive them; and shall and will cause to be thoroughly cleansed the floors and interior of all stock-cars going west from said premises, provided said cars remain a sufficient

length of time on said premises for such purpose ; and shall and will transact, prosecute and carry on the said business, and do all acts and things necessary and proper to be done at and upon the said premises, especially in regard to management and charges, to the satisfaction of the lessors, and in such a prompt and efficient manner as will always make and continue the lines of railroad owned, leased and operated by the lessors, or in which they may in any manner be interested, and wheresoever the same may be, as desirable a route or routes for the live-stock traffic as those of any other line or lines of railroad terminating at or near the city of Philadelphia, or transporting live stock to any eastern market.

Third.—The lessees shall and will, at all times during the continuance of this lease, keep, maintain and reserve the said hereby demised premises exclusively as a stock-yard for live stock transported over the lines of railroad owned, leased and operated by the lessors, or in which they may in any manner be interested, or any of them, except when permission may be given in writing, but not otherwise, by the lessors to the lessees, to receive live stock transported over the railroads of other companies in which the lessors are not directly interested ; and shall and will exert themselves, and use their influence personally and in every proper way, to secure for transportation over the lines of railroad owned, leased and operated by the lessors, or in which they may be interested, all live stock destined for Baltimore and Philadelphia, and to all cities and points east thereof ; and shall and will so use and manage the said premises, and the facilities thereby afforded, as to promote and secure the transportation of live stock over the said railroads of the lessors.

Fourth.—The lessors shall and will, so far as they lawfully can, deliver in cars on the said premises *all* the live stock which may be transported over their said lines of railroad, or any of them, and destined to the Philadelphia market, or to any market or station east of Philadelphia ; and the lessees shall have the privilege (so far as the lessors can lawfully grant the same) of furnishing all the necessary feed for live stock arriving at said

stock-yards and while remaining thereat; it being agreed that all feed, both as to quality and quantity, purchased for consumption on said premises, and the manner of feeding, watering and taking care of and unloading and loading live stock at said stock-yard, and generally the manner of transacting the business thereon and thereat, shall be satisfactory to the lessors.

Fifth.—The lessors shall and will maintain and keep in repair and good working order all the railroad tracks, turnouts, sidings and switches upon the hereby demised premises, as well as those made and constructed for the purpose of forming connections between the railroad tracks upon said premises and the Pennsylvania Railroad; and shall and will at all times during the continuance of this lease, without cost or charge to the lessees, perform all the shifting of cars over said tracks upon the said premises that may be necessary or convenient for the delivery thereon of all the live stock that may be consigned or destined to said stock-yard, and for the shipment from said stock-yard of all such live stock as may be destined or consigned to any cities, stations or markets east of Philadelphia.

Sixth.—The lessees shall be entitled to charge, collect and receive for their own use, from the owners, shippers or consignees of all such live stock as may be delivered to and received by them as aforesaid, a reasonable compensation for loading and unloading, and feeding, watering and taking care of said live stock, and for weighing and yarding any of said stock that may be sold or disposed of while in said stock-yard; they shall and will charge and collect such compensation for weighing and yarding, not exceeding the compensation for like services charged by the Central Stock-Yard and Transit Company at their yards in Jersey City, and as shall not prejudice, lessen or injuriously affect the live stock traffic over the railroads owned, leased and operated by the lessors, or in which they have any interest as aforesaid; but it is expressly agreed that live stock shipped eastward as aforesaid over the said railroads, upon through receipts or through bills of lading, and not unloaded, fed, watered or taken care of as aforesaid, shall not be subject to charges for

such services; and that any live stock not yarded nor sold or disposed of at said stock-yard shall not be subject to charges for weighing or yarding.

Seventh.—The lessees, or any of them, shall and will, when requested by the lessors, act as the agents or agent of the lessors for the collection of the freight and charges properly chargeable and to be collected upon all such live stock as may be transported to and delivered at or upon the said premises or shipped and transported therefrom; and shall and will, when so requested and appointed as agents or agent, perform the general duties incident to such agency; and shall and will enter into bond, with good and sufficient sureties to be approved by the lessors, in the sum of fifty thousand dollars, for the faithful performance of their or his duties as such agents or agent,—such bond to be of the usual and customary form required by the lessors to be given by other agents. But if the lessors shall appoint any other person than one of the lessees to act as their agent, then the lessees shall furnish him, without charge, all such proper and reasonable facilities as will enable him to promptly and efficiently discharge his duties as such agent; and if required by the lessors, the lessees shall set apart, in a suitable location, a sufficient lot of ground, not exceeding twenty feet front by fifty feet deep, out of the hereby demised premises, upon which the lessors may erect an agent's office for the transaction of their business, and such agents, as well as any other agents, officers or employees of the lessors, in the performance of their duty, shall at all reasonable times have the right of ingress and egress to, from and over the hereby demised premises.

Eighth.—Whenever, in the opinion of the board of directors of the lessors, it shall at any time hereafter be deemed necessary to make, construct and furnish additional buildings, improvements and facilities at and upon the said premises by reason of the present buildings, improvements and facilities proving insufficient to properly accommodate the business and traffic at said stock-yard, or by reason of the increase in the live-stock traffic on and over the aforesaid railroads, and whenever the lessors

shall so make, construct and furnish upon and at said premises such further and other buildings, improvements and facilities to accommodate said traffic and business as aforesaid, the yearly rent of

thousand dollars, hereinbefore reserved, shall be increased by the addition thereto of a yearly rent or sum which shall be equal to ten per centum per annum upon the cost of such further and other buildings, improvements and facilities, (except railroad tracks, sidings, turnouts and switches,) and the lessees shall and will pay, or cause to be paid, the said increased yearly rent or sum on the days and times hereinbefore mentioned for the payment of the yearly rent herein originally reserved,—the said increased rent to be computed from the time the said buildings, improvements and facilities shall be completed and ready for use.

Ninth.—Whenever the hereby demised premises shall be required by the lessors for any other purpose than a stock-yard, the lessors reserve the right to determine and annul this lease and agreement at any time during the term hereby demised, provided they shall have notified the lessees, by a written notice delivered to the lessees, or any of them, or left upon the said premises, of their desire and intention so to determine and annul this lease and agreement on the expiration of ninety days from the time of delivering or leaving such notice; and at the expiration of said ninety days from the time of so giving such notice, this lease and agreement shall, at the lessors' option, determine and become absolutely null and void; and the lessors may thereupon forthwith re-enter into and upon and take possession of the hereby demised premises and the buildings and improvements thereon, and the same have again, repossess and enjoy as of their first and former estate and title in the same, anything herein contained to the contrary thereof in anywise notwithstanding.

Tenth.—Should the lessees, in the opinion of the lessors or their president or other proper officer or agent, so manage and conduct the said premises or the business connected with, about and upon the same in such manner as to be prejudicial to, or

injuriously affect the interests and business of, the lessors, or so as to be oppressive to the shippers, owners or consignees of live stock, or as in any manner to diminish or injure, or tend to diminish or injure, the live-stock traffic over and upon the aforesaid railroads, then and in such case it shall be the duty of the lessors, acting by their president or other proper officer, to notify the lessees in writing of such act or acts of omission or commission, matters or things, as may be complained of or objectionable, as specifically as practicable, and require the same to be corrected, amended or desisted from by the lessees; and if the lessees shall not within ten days thereafter so correct, amend or desist from such acts, matters or things to the satisfaction of the said president or other proper officer, then the lessors may thereupon, by the resolution of their board of directors, cause to be given to the lessees ten days' notice in writing of their desire and intention, at the expiration of said ten days' notice, to determine and annul this lease and agreement; and upon the expiration of said ten days' notice this lease and agreement shall, at the lessors' option, determine and become absolutely null and void; and the lessors may thereupon forthwith re-enter into and upon and take possession of the hereby demised premises, and the buildings and improvements thereon, and the same have again, repossess, and enjoy as of their first and former estate and title in the same, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

Eleventh.—The lessees shall not and will not use or occupy, or permit to be used or occupied, the hereby demised premises, or the buildings or improvements thereon or any part thereof, otherwise than for the uses and purposes hereinbefore mentioned and provided; nor shall the lessees assign, transfer or demise the term hereby created; nor the said premises; nor the said buildings and improvements or any part thereof; nor underlet the same or any part thereof; nor associate any person or persons with them in carrying on the said business under this lease without the written consent of the lessors first had and obtained and expressed by a resolution of their board of directors; nor shall any voluntary assignment or assignment in bankruptcy or

any sale thereunder, nor shall the operation of any legal process of any of the courts of the State of Pennsylvania or of the United States, effect the transfer of this lease or of the hereby demised premises without the written consent of the said lessors first had and expressed as aforesaid; and in case of any sale or transfer, or attempted sale or transfer, of this lease, or of the hereby demised premises or any part thereof, under such assignment, or by legal process as aforesaid, without such written consent of the lessors, given and expressed as aforesaid, the lessors, after having given five days' written notice to any person or persons, or corporation claiming title to this lease or possession of the said premises, or any part thereunder, may thereupon re-enter upon the said premises, and the same have again, repossess and enjoy as of their first and former estate and title in the same, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

Provided, however, and it is hereby agreed, that the lessees shall have the right to erect upon the hereby demised premises, in such locality and according to such plans as may be approved by the general manager or other proper officer or agent of the lessors, a proper building, with the necessary fixtures and apparatus, to be used for killing and dressing cattle, sheep and hogs. It being distinctly understood and agreed that should such building be erected that no rendering of offal or other offensive operation shall be carried on therein or upon the said premises.

Twelfth.—The lessees hereby further covenant and agree that at the expiration of the term hereby demised, or on the determination or cancellation of this lease and agreement, either by its own limitation or under the operation of any notice that may be given under the terms hereof, or from any other cause, they shall and will forthwith quit and surrender and deliver up to the lessors, their successors or assigns, peaceable possession of the hereby demised premises, and all the buildings and improvements thereon, in good order, repair and condition,—casualties by fire and unavoidable accidents only excepted. And the lessees hereby agree to sell and relinquish unto the lessors, at a valuation to be fixed as hereinafter provided, such buildings as

may have been erected upon the demised premises by the lessees for killing and dressing cattle, sheep and hogs, but not the fixtures or apparatus in said buildings. And it is hereby further agreed, that for any breach of any of the covenants, agreements and conditions herein contained which, on the part of the lessees, are or ought to be kept and performed, this lease shall, at the option of the lessors, be forfeited, and shall as absolutely expire as if it had ceased by period or term originally limited herein; and it shall and may be lawful for the lessors, or their agents, successors or assigns, upon such forfeiture and expiration, to re-enter into and upon the hereby demised premises, and the same to have again, repossess and enjoy as of their first and former estate and title in the same, as though these presents had not been made or executed, or the term limited herein had absolutely expired.

Thirteenth.—And the lessees hereby waive and relinquish unto and in favor of the lessors the operation of all laws which do now or hereafter may exempt any property on the demised premises, or any property in any way belonging to the lessees, whether on the demised premises or elsewhere, from levy and sale, upon distress for the rents or sums of money hereby reserved, or upon any execution on any judgment obtained in any action brought for non-payment of rent, or for breach of any other of the conditions hereof. And as a further security for the payment of all rent under this lease, the lessees hereby grant, bargain and sell to the lessors, without any reservation, all their goods and chattels of every sort and kind now on the premises, or which may hereafter be brought thereon, and authorize the lessors, if the rent at any time be unpaid, to take possession of and sell them at auction, on three days' notice served in person on the lessees, or left on the premises, and pay the said lessors out of the proceeds; and even if the rent be not due and unpaid, should the lessees at any time remove goods and chattels from the premises, without leaving enough thereon to meet the next periodical payment, authorize the lessors to follow, take possession of and sell at auction, upon like notice, sufficient of such goods to meet the proportion of rent accrued at the time of such removal.

Fourteenth.—If the lessees, even without any previous demand, shall fail or omit to pay the rents or sums hereby reserved on the days and times when the same are made payable, or within ten days thereafter, (and time in this case is understood and agreed to be of the essence of the contract, and not to be relieved against,) or shall in any other respect violate any of the conditions and covenants herein contained, then at the lessors' option, to be signified by a written notice of their intention to determine this lease on a day certain therein fixed, delivered to the lessees or any of them, or left on said premises at least ten days previous to the day so fixed,—except in the cases hereinbefore mentioned for the determination of this lease, in which some other notice as to character, duration or otherwise is provided for,—then this lease and the term hereby created shall forthwith determine and become absolutely void, without any right on the part of the lessees, after the day so fixed, to save the forfeiture by payment of rent due, or by other performance of the condition or conditions thus violated. And when the lease shall be so determined by condition broken and notice as aforesaid, and also when and as soon as the term hereby created shall have expired, it shall be lawful for any attorney, as attorney for the lessees, to sign an agreement for entering in any competent court an amicable action and judgment in ejectment (without any stay of execution) against the lessees and all persons claiming under them for the recovery by the lessors of the possession of the hereby demised premises, for which this shall be a sufficient warrant; whereupon, if the lessors so desire, a writ of *habere facias possessionem* may issue forthwith, without any prior writ or proceedings whatsoever,—the lessees hereby releasing and agreeing to release the lessors from all errors and defects whatsoever in entering such action or judgment, or causing such possessory writ to be issued, or in any proceeding thereon or concerning the same, and hereby agreeing that no writ of error or objection or exception shall be made or taken thereto: *Provided*, That the lessors shall first cause to be filed in such action an affidavit made by them, or some one on their behalf, setting forth the facts necessary to authorize the entry of such judgment according to the terms of this lease, of which facts such affidavit shall be conclusive evidence, and if a true

copy of this lease (and of the truth of the copy such affidavit shall be sufficient evidence) shall be annexed to such affidavit, it shall not be necessary to file the original as a warrant of attorney, any rule of court to the contrary notwithstanding. No such determination of this lease, nor taking or recovering possession of the premises, shall deprive the lessors of any remedy or action against the lessees, for rent or for damages for the breach of any covenant herein contained; nor shall the bringing of any such action for rent or breach of covenant, nor the resort to any other remedy herein provided for the recovery of rent or damages for such breach, be construed as a waiver of the right to insist upon the forfeiture and obtain possession in the manner hereinabove provided.

Fifteenth.—If at any time during the term hereby granted, and before the expiration thereof, this lease shall be determined by the action or at the option of the lessors, and not by reason of any default on the part of the lessees, or on account of any breach by the lessees of any of the covenants herein contained, the lessors hereby agree to retain and pay for such buildings as may have been erected by the lessees on the demised premises for killing and dressing cattle, sheep and hogs as aforesaid, and being upon the said premises at the time of so determining this lease, and re-entering upon possession of said premises; said buildings to be paid for at a valuation to be fixed as hereinafter mentioned, and to be based upon the cost of said buildings, with a fair and reasonable allowance and deduction for wear and tear, not in any event, however, exceeding the then value of the buildings; but the said valuation shall not include any of the apparatus or fixtures in or connected with said buildings, except at the option of said lessors, it being hereby understood and agreed that the lessees shall have the right to remove said apparatus and fixtures, and that the lessors are not to pay for the same, unless said lessors should exercise their option to take the same: *Provided always*, That if at any time during the said term, the slaughtering, killing and dressing of cattle, sheep or hogs, or the carrying on of the stock business upon the hereby demised premises, shall be prohibited by law, or if this lease shall be determined from any cause beyond the

control of the lessors, or in consequence of any default or breach of covenant on the part of the lessees as herein mentioned, then and in any such event the lessors shall not be liable to retain and pay for said buildings unless they shall elect to do so; and in the event of their so electing to retain said buildings, they may do so upon paying to the lessees a sum, to be ascertained as hereinafter mentioned, equal to the value of the old materials contained in said buildings (but not the fixtures and apparatus therein) if the same were taken down and removed, less the cost of tearing down said buildings and removing the materials; but if said lessors should not so elect to retain and pay for said buildings, as herein mentioned, then the lessees are to have the right to take down said buildings or buildings and fixtures, and remove the materials of same, and the fixtures and apparatus therein, from the said premises. And if the parties hereto cannot agree upon the sum to be paid by the lessors for the said buildings, or for the value of the materials thereof as aforesaid, then each of said parties shall choose a competent person to act as arbitrators in determining said sum, and such two arbitrators, upon being chosen, shall proceed to determine said sum; and if the said two arbitrators cannot agree upon the same, they two shall choose a third like competent person to act with them, and the said three arbitrators, or a majority of them, shall thereupon determine said sum to be paid as aforesaid, and the lessors hereby agree to pay the sum so determined and fixed by the said arbitrators, or a majority of them, without delay.

Sixteenth.—Each and all of the covenants, agreements and stipulations hereinbefore contained, and the rights and liabilities herein given to or imposed upon either of the parties hereto, shall extend to and mutually bind and inure to the benefit of the successors, heirs, executors, administrators and assigns of such party, as though they were in each case named, unless where the assigns are expressly excluded from certain rights.

In Witness Whereof, The said lessors, party of the first part, have caused their common or corporate seal to be hereunto affixed, and have caused these presents to be signed by their

president, and the execution hereof attested by their secretary;
and the said lessees, parties of the second part, have hereunto
set their hands and seals. Dated the day and year first above
written.

Sealed and delivered in }
the presence of us :

President.

Attest :

Secretary.

[SEAL]

[SEAL]

[SEAL]

[SEAL]

[SEAL]

[SEAL]

[SEAL]

STATE OF PENNSYLVANIA, }
CITY OF PHILADELPHIA, } ss.

BE IT REMEMBERED, That on the day of
Anno Domini one thousand eight hundred and
seventy- (187), before me, the subscriber,

personally appeared Joseph Lesley, who, being duly sworn according to law, did depose and say, that he is the secretary of the Pennsylvania Railroad Company, the corporation in the above-written indenture named; that he was personally present at the execution of the said indenture, and saw the corporate seal of the said company thereunto affixed; that the president of the said company, did at the same time sign, seal and deliver the said indenture as his act and deed, and as the act and deed of the said company by virtue of the authority vested in him as such president, and in pursuance of a resolution of the board of directors of the said company, passed at a meeting of the said board held on the day

Anno Domini one thousand eight hundred and seventy- (187), and desired that the said indenture might be recorded as such act and deed; that the seal so affixed is the common or corporate seal of the said company; that he, the deponent, at the same time subscribed his name to the said indenture as a subscribing witness thereto, and as said secretary in attestation of the due execution and delivery thereof, and that the name of the said president, and of the deponent, subscribed to the said indenture as aforesaid, are of their own proper and respective handwriting.

and subscribed be-
fore me the day and year
first aforesaid. Witness my
hand and seal.

the undersigned, for value received, and in consideration of the execution of the foregoing lease by the above-named lessors, do hereby covenant and agree to and with the said above-named lessors, their successors and assigns, that the said above-named lessees, their executors, administrators and assigns, shall and will faithfully and punctually perform all the covenants and conditions in the said lease contained, and by them to be done and performed. And do further covenant, that if the said lessees shall not pay said rent punctually as the same shall fall due, or shall violate any of the above covenants, an immediate recourse may be had and made to by demand, suit or otherwise, without any prior proceeding against the said lessees. And do further covenant and agree, that liability under the provisions of this agreement of lease shall continue according to the terms thereof, so long as the liability of the said lessees shall continue, notwithstanding the same shall extend beyond the term hereinbefore named, unless previous to the expiration of the lease, or of any additional term of shall cause to be delivered to the lessors, their successors or assigns, a written notice of intention not to renew liability after the expiration of said term or renewed lease, for any longer period.

In Witness Whereof, have hereunto set hand and seal the day of Anno Domini one thousand eight hundred and seventy-

Sealed and delivered
in the presence of

[SEAL]

[SEAL]

[SEAL]

STATE OF PENNSYLVANIA, }
 CITY OF PHILADELPHIA, } ss.

BE IT REMEMBERED, That on the day of
 Anno Domini one thousand eight hundred and seventy-
 (187), before me, the subscriber,

personally appeared the above-named Joseph J. Martin, Alfred
 M. Fuller, Samuel W. Allerton, John R. McPherson, William
 M. Fuller, Thomas B. Schriver, and James McFillin, Jr., and
 in due form of law severally acknowledged the above-written
 indenture to be their act and deed, and desired the same might
 be recorded as such.

Witness my hand and seal the day and year aforesaid.